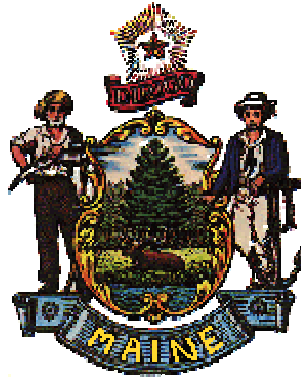


COMPLIANCE AUDIT REPORT

STATE OF MAINE WORKERS' COMPENSATION BOARD



BUCKLER, IRVIN & GRAF, INC. February 8, 2002

Monitoring, Audit & Enforcement (MAE) Division

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SUMMARY

The Audit Division of the Maine Workers' Compensation Board (WCB) examined a sample of 25 claim files for the period under examination (2000) to determine compliance with statutory and regulatory requirements in the following areas:

- Form filing
- Timeliness of indemnity payments
- Accuracy of indemnity payments

Of the 25 claims files audited, there were 9 "lost time" claims, 11 "medical only" claims and 5 "incident only"¹ claims. Of the 9 "lost time" claims audited, 3 were compensable.

Our on-site audit of Buckler, Irvin & Graf began September 17, 2001 and ended September 18, 2001.² At the time of our on-site audit Buckler, Irvin & Graf was responsible for all K-Mart Corporation workers' compensation claims in Maine. Their agent in Maine (as required by Title 24-A) provided the following support services:

1. Filing forms (except WCB-1, Employer's First Report of Occupational Injury or Disease forms) with the WCB.
2. Assisting (Buckler, Irvin & Graf's adjuster) with the investigation and management of lost time claims.
3. Assisting (assigned attorneys) with the investigation and management of litigated claims.
4. Attending WCB meetings and hearings (with assigned attorneys, as applicable).

Buckler, Irvin & Graf's contractual responsibility for those claims was terminated (effective October 15, 2001) by the complete severance of their contract with the K-Mart Corporation.

The compliance tables found on pages 7 through 9 of this report are representative of our findings as of September 18, 2001. Since that time, the Audit Division has requested missing form filings, form corrections, payments and payment adjustments. Buckler, Irvin & Graf was unable to comply with those requests because of the aforementioned change of contract. Therefore, our requests were forwarded to their successor (Cambridge Integrated Services) who has graciously complied with those requests.

Our audit revealed:

- Form filing compliance ranged from 0% to 100%.
- Total (100%) compliance was found in the filing of the following forms:
 - ◆ WCB-9, Notice of Controversy forms (for "medical only" claims)
 - ◆ WCB-4, Discontinuance or Modification of Compensation forms.

¹ "Incident only" Claims incur no medical expenses and less than a day of lost time.

² This summary addresses our findings for all known claim activity (regarding the audit sample) through February 8, 2002.

SUMMARY (continued)

- Sixty-seven percent (67%) of the required WCB-3, Memorandum of Payment forms were found to be compliant.
 - ◆ Both of the compliant WCB-3 forms were filed with late-filed WCB-9, Notice of Controversy forms (pursuant to Rule 1.1.3).
- Only one (33%) of the required WCB-2, Wage Statement forms was filed timely. However, the other two forms were filed (late) prior to audit.
- Three (30%) of the ten required WCB-1, Employer's First Report of Occupational Injury or Disease forms were filed timely.
 - ◆ Most alarming is the fact that five (50%) of the required WCB-1 forms had not been filed at the time of audit.

It is important to note that, based on K-Mart Corporation procedures, the individual (K-Mart) stores are responsible for calling in injuries to a national centralized office that (formerly) relayed notice to Buckler, Irvin & Graf. The stores are also responsible for completing and filing the WCB-1 forms with the Workers' Compensation Board.

Although Buckler, Irvin & Graf asserts that they routinely reminded the stores of their obligation to file WCB-1 forms, they (Buckler, Irvin & Graf) did not assume responsibility for the completion or filing of those forms.

- Zero percent (0%) compliance was found in the filing of the following forms:
 - ◆ WCB-2A, Schedule of Dependent(s) and Filing Status Statement
 - ◆ WCB-9, Notice of Controversy (for "lost time" claims)
 - ◆ WCB-11, Statement of Compensation Paid
- None (0%) of the initial indemnity payments were made timely.
 - ◆ Two of the three late (initial) payments were made in accordance with Rule 1.1(2) because of late-filed WCB-9, Notice of Controversy forms.
 - ◆ None of the late (initial) payments were subject to penalties under §205(3).
- Nineteen (83%) of the twenty-three subsequent payments were made timely.
 - ◆ Two of the four late (subsequent) payments are subject to penalties under §205(3).
- No problems were identified in the methods used to calculate average weekly wages (100% compliance).

SUMMARY (continued)

- Zero percent (0%) compliance was found in calculating weekly benefits rates.
 - ◆ The wrong number of dependents was used to determine the benefit rate for one of the claims.
 - This error was compounded by the fact that the number of days of lost time was incorrectly calculated. These errors resulted in an underpayment of \$70.55 that has since been paid by Cambridge Integrated Services.
 - ◆ Two rates were incorrectly charted from the Weekly Benefit Table.
 - This resulted in a small overpayment (\$6.05) for the first claim.
 - A provisional rate was used to pay all benefits for the second claim prior to receipt of the wage information necessary to determine the average weekly wage. That provisional rate was considerably higher than the correct rate (and the rate charted by Buckler, Irvin & Graf). This resulted in an overpayment of \$255.74.

This Audit Division believes that Buckler, Irvin & Graf understands and routinely uses the proper methods for calculating weekly benefit rates. However, greater care should be used to ensure accuracy.

- Incorrect dates were reported in Box 24 of the initial MOPs filed for all three of the compensable claims that were audited.
 - ◆ It appears that the off-site adjuster entered the date the WCB-3 form was completed into Box 24, rather than the date the check was actually mailed from Buckler, Irvin & Graf's Massachusetts office.
 - Box 24 (Date Check Mailed) of the WCB-3, Memorandum of Payment (MOP), should accurately reflect the date that the initial indemnity payment is sent to the employee.

The penalties listed on pages 5 and 6 of this report are representative of compliance as measured on November 16, 2001. (November 16, 2001 was the deadline given to Cambridge Integrated Services for response to the Audit Division's request for information, forms and corrections needed.)

PENALTIES

◆ Section 205(3), M.R.S.A. Penalties (payable to injured employees)

“When there is not an ongoing dispute, if weekly compensation benefits or accrued weekly benefits are not paid within 30 days after becoming due and payable, \$50 per day must be added and paid to the worker for each day over 30 days in which the benefits are not paid. Not more than \$1,500 in total may be added pursuant to this subsection. For purposes of ratemaking, daily charges paid under this subsection do not constitute elements of loss.”

Penalties pursuant to 39-A M.R.S.A. Sec. 205(3) are paid directly to the injured employee. The penalties below are being sought. If you disagree, you have the right to a hearing before the Abuse Investigation Unit. Please provide proof of payment for all undisputed penalties.

CLAIM	PENALTY JUSTIFICATION	PENALTY AMOUNT
Andrea Cole vs. K-Mart Corporation Date of Injury: 9-4-00 Buckler, Irvin & Graf File #: 19-7838 WCB File #: 13282	The second indemnity payment (11-8-00) was made 41 days after the initial indemnity payment (9-28-00).	\$200.00
James Smith vs. K-Mart Corporation Date of Injury: 12-6-00 Buckler, Irvin & Graf File #: 19-7853 WCB File #: 18360	The second indemnity payment (2-22-01) was made 44 days after the initial indemnity payment (1-9-01).	\$350.00
<hr/> Total Penalties to Injured Employees		\$550.00

PENALTIES (Continued)

◆ Penalties Allowed by Law (Payable to the Workers' Compensation Board)

39-A M.R.S.A. Sec. 359(2)

“In addition to any other penalty assessment permitted under this Act, the board may assess civil penalties not to exceed \$10,000 upon finding, after hearing, that an employer, insurer or 3rd-party administrator for an employer has engaged in a pattern of questionable claims-handling techniques or repeated unreasonably contested claims. The board shall certify its findings to the Superintendent of Insurance, who shall take appropriate action so as to bring any such practices to a halt. This certification by the board is exempt from the provisions of the Maine Administrative Procedure Act.”

39-A M.R.S.A. Sec. 360(1)(A)

“The board may assess a civil penalty not to exceed \$100 for each violation on any person: Who fails to file or complete any report or form required by this Act or rules adopted under this Act;”

39-A M.R.S.A. Sec. 360(1)(B)

“The board may assess a civil penalty not to exceed \$100 for each violation on any person: Who fails to file or complete such a report or form within the time limits specified in this Act or rules adopted under this Act.”

- Seventeen (17) forms were filed late (\$1,700.00).

39-A M.R.S.A. Sec. 360(2)

“The board may assess, after hearing, a civil penalty in an amount not to exceed \$1,000 for an individual and \$10,000 for a corporation, partnership or other legal entity for any willful violation of this Act, fraud or intentional misrepresentation. The board may also require that person to repay any compensation received through a violation of this act, fraud or intentional misrepresentation or to pay any compensation withheld through a violation of this Act, fraud or misrepresentation, with interest at the rate of 10% per year.

INDEMNITY BENEFITS

A. Prompt Initial Payment of Benefits

			2000	
			Number	Percent
Check Mailed Within:				
0-14	Days	Compliant	0	0%
15-28	Days		1	33%
29+	Days		2	67%
Total Due			3	100%

B. Prompt Subsequent Payment of Benefits

			2000	
			Number	Percent
Check Mailed Within:				
0-7	Days	Compliant	19	83.0%
8-14	Days		2	8.5%
15 +	Days		2	8.5%
Total Due			23	100.0%

C. Accuracy of Average Weekly Wage

			2000	
			Number	Percent
Calculated:				
Correct		Compliant	3	100%
Total			3	100%

D. Accuracy of Weekly Benefit Rate

			2000	
			Number	Percent
Calculated:				
Correct		Compliant	0	0%
Incorrect			3	100%
Total			3	100%

FORM FILING

A. First Report (WCB-1)

		2000	
		Number	Percent
Received at the Board:			
Filed	Compliant	3	30%
Filed Late		2	20%
Not Filed		5	50%
Total		10	100%

In addition to the 3 claims shown as “filed”, one WCB-1 form that was not required was also filed.

B. Wage Statement (WCB-2)

		2000	
		Number	Percent
Received at the Board:			
Filed	Compliant	1	33%
Filed Late		2	67%
Total		3	100%

C. Schedule of Dependent(s) and Filing Status Statement (WCB-2A)

		2000	
		Number	Percent
Received at the Board:			
Filed	Compliant	0	0%
Filed Late		2	67%
Not Filed		1	33%
Total		3	100%

D. Memorandum of Payment (WCB-3)

		2000	
		Number	Percent
Received at the Board:			
Filed (with NOC)	Compliant	2	67%
Filed Late		1	33%
Total		3	100%

FORM FILING (Continued)

E. Discontinuance or Modification (WCB-4)

		2000	
		Number	Percent
Received at the Board:			
Filed	Compliant	3	100%
Not Filed		0	0%
Total		3	100%

F. Notice of Controversy (WCB-9)

Lost Time Claims		2000	
		Number	Percent
Received at the Board:			
Filed	Compliant	0	0%
Filed Late		2	100%
Total		2	100%

Medical Only Claims		2000	
		Number	Percent
Received at the Board:			
Filed	Compliant	1	100%
Total		1	100%

G. Statement of Compensation Paid (WCB-11)

		2000	
		Number	Percent
Received at the Board:			
Filed	Compliant	0	0%
Not Filed		3	100%
Total		3	100%